IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

Crl.Rev.Pet.No. 2134 of 2007()

CRA.389/2005 of I ADDL. SESSIONS COURT, PALAKKAD
ST.1290/2000 of JUDL.MAGISTRATE OF FIRST CLASS COURT-III, PALAKKAD

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REVN. PETITIONER: APPELLANT/ACCUSED

JOHN SOLOMON, GERRY GARDEN,
THACHAMPARA P.O., MANNARKAD TALUK, OTTAPALAM,
PALAKKAD DIST.

BY ADV. SRI.K.S.MOHAMED HASHIM

RESPONDENTS: RESPONDENTS/COMPLAINANT

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1. K.SREEKUMAR, S/O KESAVAN,
KESAVA NIVAS, PALAKKAD ROAD,
KODUVAYURAMSOM AND DESOM,
CHITTOOR TALUK, PALAKKAD.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 24/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2134 OF 2007 B

Dated this the 24th day of July, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T. No.1290/2004 on the file of the J.F.C.M.-III, Palakkad challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision

Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. As against the testimony of the complainant examined as PW1 to the effect that the cheque in question was signed by the accused himself and handed over to him, the explanation offered by the accused was that the cheque was in fact given by him to one Meera Nair with regard to the transaction entered into by him and Meera Nair and Meera Nair had misused the same by making it available to the complainant. The accused did not mount the witness box nor did he cite Meera Nair as a witness. This was taken note of by the courts below while discarding the defence contention. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence

imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of compensation under section 357(3) Cr.P.C. a sum of Rs.2,00,000/- (Rupees two lakhs only) within four months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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